

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

GREGORY D. JONES,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 07-cv-44-MJR
)	
OFFICER GARDNER, <i>et al.</i>,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

REAGAN District Judge:

This matter is before the Court on Plaintiff's motion for extension of time "to respond in opposition" (Doc. 7) and Plaintiff's motion in opposition (Doc. 9).

Acting pursuant to 28 U.S.C. § 1915A, the Court conducted a threshold review of Plaintiff's complaint and determined that Counts 2 and 3 failed to state a claim upon which relief may be granted. *See* (Doc.5). Accordingly, the Court dismissed Counts 2 and 3 and referred the remainder of the complaint (Count 1) to a Magistrate Judge for further proceedings. *Id.* Plaintiff's motion in opposition contests the Court's pre-service dismissal of Counts 2 and 3.

Technically, a "motion to reconsider" does not exist under the Federal Rules of Civil Procedure. The Seventh Circuit has held, however, that a motion challenging the merits of a district court order will automatically be considered as having been filed pursuant to Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. *See, e.g., Mares v. Busby*, 34 F.3d 533, 535 (7th Cir. 1994); *United States v. Deutsch*, 981 F.2d 299, 300 (7th Cir. 1992). A motion pursuant to Rule 59(e) must be filed "no later than 10 days after entry of the judgment," while a motion pursuant to Rule

60(b) “shall be made within a reasonable time, and... not more than one year after the judgment... was entered...” However, a court “may not extend the time for taking any action under Rules 59(b), (d) and (e), 60(b)....” FED.R.CIV.P. 6(b); *see also Varhol v. National Railroad Passenger Corp.*, 909 F.2d 1557 (7th Cir. 1990); *Nugent v. Yellow Cab Co.*, 295 F.2d 794 (7th Cir.), *cert. denied*, 368 U.S. 828 (1961). Therefore, the Court cannot grant Plaintiff an extension of time to file a motion under Rule 59(e) or Rule 60(b). Accordingly, Plaintiff’s motion for an extension of time (Doc. 7) is **DENIED**.

The Court’s order dismissing Counts 2 and 3 was entered on November 6, 2008, but the instant motion was not filed until December 30, 2008, well after the 10-day period expired. *See* FED.R.CIV.P. 59(e). Therefore, as a Rule 59(e) motion, the motion is time-barred.

Under *United States v. Deutsch*, 981 F.2d 299, 300 (7th Cir. 1992), the Court will thus construe the motion as filed pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Rule 60(b) provides for relief from judgment for “mistake, inadvertence, surprise, or excusable neglect.” FED.R.CIV.P. 60(b)(1). However, the reasons offered by a movant for setting aside a judgment under Rule 60(b) must be something that could not have been employed to obtain a reversal by direct appeal. *See, e.g., Bell v. Eastman Kodak Co.*, 214 F.3d 798, 801 (7th Cir. 2000); *Parke-Chapley Constr. Co. v. Cherrington*, 865 F.2d 907, 915 (7th Cir. 1989) (“an appeal or motion for new trial, rather than a FRCP 60(b) motion, is the proper avenue to redress mistakes of law committed by the trial judge, as distinguished from clerical mistakes caused by inadvertence”); *Swam v. United States*, 327 F.2d 431, 433 (7th Cir.), *cert. denied*, 379 U.S. 852 (1964) (a belief that the Court was mistaken as a matter of law in dismissing the original petition does “not constitute the kind of mistake or inadvertence that comes within the ambit of rule 60(b).”).

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After careful review, the Court concludes that relief pursuant to Rule 60(b) is not warranted. To the extent that Plaintiff seeks to make additional allegations (e.g., retaliation) he must make them in a proper amended complaint, not by filing this motion. Therefore, Plaintiff's motion in opposition (Doc. 9) is **DENIED**.

IT IS SO ORDERED.

DATED this 5th day of February, 2009.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge